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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Coram :- **Hon'ble Shri V.K. Shrivastava and**
Hon'ble Shri Dhirendra Mishra, JJ

Misc. Appeal (C) No. 521 of 2006

Appellants :
Claimants

1. Bhanuram Sahu, Son of Shri Dukhuram, Aged about 65 years.

2. Smt. Garidin Bai, Wife of Shri Bhanuram Sahu, Aged about 60 years.

Both are resident of village Guma, Police Station Suhela, District Raipur (CG).

Versus

Respondents :

1. Bhuneshwar, Son of Shri Somdas Manikpuri, Aged about 21 years, R/o Village Guma, Police Station Suhela, District Raipur (CG).

Driver of the vehicle

2. Sheksh Shabbir, Son of Shekh Munir, Mohdapara, Raipur, District Raipur (CG).

Owner of the vehicle

3. The New India Insurance Company Limited, Branch R.D.A. Building, Bajrang Market, Raipur, District Raipur (CG).

Insurer

Present :- Mr. P.P. Sahu, counsel for the appellants/claimants.

None for the respondents.

(ORAL ORDER)
(Passed on 29th January, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth "the Act, 1988") against the award dated 31-8-2006 passed by the First Additional Motor Accident Claims Tribunal, Baloda Bazar, Raipur (henceforth 'the Tribunal'), whereby an award of Rs.1,54,000/- has been passed in favour of the appellants. Feeling aggrieved appellants have preferred this appeal for enhancement of the compensation amount.

2) Jitendra (since deceased) was working as conductor in minibus bearing registration No.CG-04/ZA/0615. On 21-6-2005 when the offending vehicle was going towards Raipur on the way near Holi Dabri the vehicle turned turtle, Jitendra received injuries and succumbed to that. Appellants are father and mother of the deceased; claiming themselves to be the legal representatives of the deceased filed an application under Section 166 of the Act, 1988 claiming Rs.15,90,000/- towards the compensation against the Driver, vehicle owner and the insurer. Respondent No.1 did not file his written statement, whereas other respondents contested the claim.

3) After appreciating the evidence adduced by the appellants, learned Tribunal held monthly income of deceased Jitendra Rs.1500/- and accordingly assessed annual dependency Rs.12,000/-. Learned Tribunal applying multiplier of 12, allowed Rs.1,44,000/- towards dependency and further allowed Rs.10,000/- towards other heads.

4) Learned counsel for the appellants contended that deceased Jitendra was working as conductor and towards salary he was receiving Rs.5,000/- per month, but learned Tribunal did not accept his monthly income and erred thereby.

5) From record, it is manifest that the employer has not been examined by the appellants, even in support of monthly income no document or certificate obtained from employer has been tendered or proved. Smt. Garibin Bai in her preliminary evidence deposed that Jitendra was earning Rs.5,000/- per month towards salary and when she was examined again she stated that Jitendra was receiving Rs.3,000/- per month towards salary. She further stated that Jitendra was also doing the

business of betel shop (*Pan Thela*) and was earning Rs.1,000/- to Rs.2,000/- per month, but in cross-examination she frankly conceded that her younger son Derha is doing the agricultural work and the business of betel shop (*Pan Thela*). Evidently her statement was not credible. Learned Tribunal very minutely evaluated her evidence and thereafter holding that Jitendra was doing the work of conductor, allowed his monthly income Rs.1,500/-. From the evidence on record, finding of facts recorded by learned Tribunal does not appear to be erroneous or illegal.

6) Learned Tribunal applied multiplier of 12 without taking into consideration that claim has been preferred by aged father and mother who are about 65 and 60 years respectively. For application of multiplier their age was required to be considered. In fact learned Tribunal has allowed more than the sum entitled by the appellants, but in absence of cross appeal against the impugned award, at this juncture, we are not inclined to interfere with the findings recorded by learned Tribunal regarding dependency.

7) No other points have been raised by learned counsel for the appellants during the course of arguments. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly dismissed *in limine*. No costs.

Gowri

Sd/-
V.K. Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge